*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.25307 of 2001

%27.01.2006

£ N. Padmakar Reddy, Son of N. Sivarama Reddy,
Hindu, aged about 47 years, R/o. Konayayagaripally,
Kothapet Post, Pullampet Mandal, Cuddapah District.

… Petitioner

Vs.

$ The Government of Andhra Pradesh,
Rep. by Secretary, Home Department,
Secretariat Buildings, Hyderabad, and
six others.

… Respondents

! For the petitioner …Mr.T.BAL REDDY

^For the Respondents …G.P.FOR HOME

<Gist:

>Head Notes:

? Cases Referred

1. AIR 1998 SC 2001
2. 2004 AIR SCW 2063
3. AIR 1979 SC 1791

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.25307 OF 2001

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Dated: 27-01-2006

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Between:

N. Padmakar Reddy, Son of N. Sivarama Reddy,

Hindu, aged about 47 years, R/o. Konayayagaripally,

Kothapet Post, Pullampet Mandal, Cuddapah District.

… Petitioner

And

The Government of Andhra Pradesh,

Rep. by Secretary, Home Department,

Secretariat Buildings, Hyderabad, and

six others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.25307 OF 2001

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ORDER:

The petitioner is Accused No.4 in P.R.C.No.1/98 on the file of the Court of the Judicial Magistrate of First Class, Nandalur, Cuddapah District. The said P.R.C. arose out of Crime No.25/97 of P.S. Pullampet, under Sections 302 and 379 of the

Indian Penal Code, 1860. The petitioner seeks Writ of Mandamus declaring the action of the Deputy Superintendent of Police, the fifth respondent herein, in filing a memo before the Court of JFCM, Nandalur, requesting to proceed with the case based on the charge sheet filed by P.S. Pullampet, as illegal and arbitrary. The petitioner also seeks a further direction to the seventh respondent to exonerate the petitioner from Crime No.25/97 based on the report of the Deputy Superintendent of Police, CBCID, Nellore, the fourth respondent herein.

The fact of the matter is not much in dispute. On
20-06-1997, one Poli Peddi Reddy and his unmarried daughter Poli Jyothi were murdered on the metal road running from Puttanavari Palli to Konayyagari Palli. The F.I.R. was lodged by the petitioner with P.S. Pullampet, which was registered as Crime No.25/97, under Sections 302 and 379 I.P.C. Subsequently, the petitioner was also added as Accused No.4 and he was allegedly arrested by local police. The petitioner, therefore, filed Writ Petition for Habeas Corpus, being W.P.No.16063 of 1997. Be that as it is, the petitioner also made a representation to the Hon'ble Home Minister, Government of Andhra Pradesh, requesting to entrust the investigation to the Crime Branch, C.I.D. Accordingly, by Memo C.No.1840/C4/CID/97 dated 13-11-1997, the seventh respondent directed the entrustment of the case to the CBCID.
One A.V. Subba Rao, DSP, CID, Nellore, completed investigation and submitted a report, recommending further enquiry. In the meanwhile, curiously, the Inspector of Police, P.S. Rajampet, filed a charge sheet on 22-01-1998 on the file of the Court of the JFCM, Nandalur. Almost simultaneously, on 23-01-1998, the investigating officer of CBCID filed a report, *inter alia*, exonerating the petitioner from indictment. Presumably for this reason and also after conducting investigation on his own, one R.P. Dube, the third respondent herein, filed a memo before the Criminal Court to stall proceedings in P.R.C.No.1/98 in view of further investigation by CBCID. Subsequently, during 1999, one Z. Prabhakar, DSP, CID, Kurnool and during 2000, one C.S. Prasada Rao, DSP, CID, Kurnool, conducted further investigation. They, in their reports, observed that the involvement of the petitioner in the double murder case has to be ruled out, as there is no evidence against him. Be that as it is, the seventh respondent having come to know that the local police filed charge sheet, issued a radio message on 27-07-2000, directing the withdrawal of the charge sheet from the Court and conducting investigation *de novo*. At this stage, the opinion of the Assistant Public Prosecutor was sought, who opined that the charge sheet filed by the local police cannot be withdrawn unless such order is obtained from the Government of Andhra Pradesh. When this was brought to the notice of the seventh respondent, he issued instructions on 01-05-2001, directing the DSP, Cuddapah (CBCID), to file a memo requesting the Criminal Court to proceed with P.R.C.No.1/98. Accordingly, the fifth respondent filed a memo on 14-05-2001 on the file of the JFCM, Nandalur, requesting the Court to proceed with the trial of the case on the basis of the charge sheet filed by the local police.

A detailed counter affidavit is filed by the third respondent. The factual background of the case is not seriously disputed. But, however, it is stated that in view of the legal opinion given by the Assistant Public Prosecutor, the seventh respondent

directed the fifth respondent to file the impugned memo. The respondents have also produced the entire case file in Crime No.25/97 containing the reports submitted by five investigating officers of the rank of DSP, CBCID, during the history of investigation in Crime No.25/97.

The learned Senior Counsel for the petitioner,
Sri T. Bal Reddy, submits that when a charge sheet which was filed in contravention of the procedure is to be withdrawn, the permission of the Government of Andhra Pradesh is not required, and therefore, the seventh respondent ought to have ignored the legal opinion issued by the Assistant Public Prosecutor, Cuddapah. He also points out that the charge sheet was filed by the local police after the seventh respondent directed to withdraw the case and take up further investigation. In that view of the matter, obtaining the opinion of the Assistant Public Prosecutor was unnecessary. Secondly, he would urge that when once the investigation from the local police is withdrawn, and the same is entrusted to CBCID by the competent authority, the charge sheet filed by the local police is illegal, as local police have no such power or authority to investigate the case, which is withdrawn. The learned Senior Counsel placed strong reliance on the decisions of the Supreme Court in **K. Chandrasekhar v. State of Kerala** and **Hasanbhai Valibhai Qureshi v. State of Gujarat**.

The learned Government Pleader for Home, who has produced the entire original record before this Court, submits that the seventh respondent has obtained legal opinion before directing the fifth respondent to file the impugned memo, and therefore, the impugned action is sustainable.

Before considering the two legal questions that fall for enquiry, a brief reference may be made to the reports submitted by the investigating officers of CBCID. The first one is the report dated 27-12-1997 submitted by Mr. A.V. Subba Rao. In the said report, the investigating officer refers to the investigation by local police and also the enquiry by CBCID. The investigating officer also made local enquiries and came to the conclusion that a senior officer in the CID Wing may take up investigation of the case. He expressed opinion that the petitioner herein was not at all concerned and that he was falsely implicated in the case. The second report is by one R.P. Dube, also a DSP, CID, Kurnool. While pointing out the finger to one Gopinath Reddy and while further making favourable observations with regard to the petitioner herein, he opined that whether or not the petitioner is involved, must be left to the Court. Next comes the report of Mr. K. Ravinder Reddy, DSP, CID, Kurnool. This report was filed in April, 1999, concluding that Gopinath Reddy was the prime accused and that he had active cooperation of Vemulayya, Sreenu and Sudhakar as well as the petitioner. Five months thereafter, in October, 1999, Mr. Z. Prabhakar, who replaced K. Ravinder Reddy, at Kurnool, filed enquiry report observing that Gopinath Reddy and his three associates murdered the deceased, and to avoid complications, the petitioner is falsely implicated. There was yet another report by Dr. C. Syam Prasada Rao, DSP, CID, Cuddapah, submitted to the seventh respondent on 07-07-2000. In his opinion, there is evidence to rule out the involvement of the petitioner in the commission of offence as well as by the local police. The officer also suggested to the seventh respondent to withdraw the charge sheet filed by the local police from

the Court of the JFCM, Nandalur, and to start fresh investigation into the facts of the case.

The above summary of various reports submitted by the investigating officers would show that all the officers unanimously came to the conclusion that fresh investigation is required and that the involvement of the petitioner in the commission of offence is ruled out. However, in the charge sheet filed by the Inspector of Police, P.S. Rajampet, the petitioner is also indicted, making allegations regarding his culpability. In law, even at the preliminary stage of investigation of a capital crime, committal of such case by the cognizance-taking Magistrate to Sessions Court, the procedure has to be strictly complied with. In this case, on a request made by the petitioner, the seventh respondent issued directions on 13-11-1997 to transfer the case from P.S. Pullampet, presumably within the jurisdiction of the Inspector of Police, Rajampet to CBCID. The investigating officers immediately took up investigation and sent preliminary reports, opining that further investigation by senior officers is required. In spite of the same, the Inspector of Police, Rajampet (Rural) filed a charge sheet dated 22-01-1998. When once the case is transferred from his jurisdiction to CBCID, it would be *ex facie* illegal for the local police to file such charge sheet.

The ratio in **K. Chandrasekhar's Case** (supra) lends support to this view. The said case arose in the background of entrustment of the case to Central Bureau of Investigation in accordance with Section 6 of Delhi Special Police Establishment Act, 1946. On the recommendation of the Director General of Police of the State, a case registered under Sections 3 and 4 of the Indian Official Secrets Act, Government of Kerala entrusted the case to CBI, who re-registered the case and took up investigation. CBI also filed a charge sheet on the file of the Court of the Chief Judicial Magistrate, Cochin. This report/charge sheet was in favour of the accused and therefore they were discharged. At this stage, Government of Kerala issued notification withdrawing consent given to CBI to investigate the crime and further ordered that the case be re-investigated. This order of the Government was assailed by the accused before the Kerala High Court, which did not sustain the challenge. The Supreme Court, considered the question whether in a case investigated by CBI, whether the State Government can withdraw the consent given to CBI and order further re-investigation. The question was answered in the negative observing as under:

> " The dictionary meaning of 'further' (when used as an adjective) is 'additional', more supplemental. 'Further' investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports – and not fresh report or reports – regarding the 'further' evidence obtained during such investigation. Once it is accepted –

> and it has got to be accepted in view of the judgment in Kazi Lhendup Dorji, (1994 AIR SCW 2190) (supra) that an investigation undertaken by CBI pursuant to a consent granted under Section 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that 'further investigation' is a continuation of such investigation which culminates in a further police report under sub-section (8) of Section 173, it necessarily means that withdrawal of consent in the instant case would not entitle the State Police, to further investigate into the case. To put it differently, if any further investigation is to be made it is the C.B.I. alone which can do so, for it was entrusted to investigate into the case by the State Government. Resultantly, the notification issued withdrawing the consent toe enable the State Police to further investigate into the case is patently invalid and unsustainable in law.

The case in **K. Chandrasekhar** (supra) and its background is similar to the facts in the present case. It may also be noticed here that having come to know that the Inspector of Police, Rajampet (Rural) filed a charge sheet before the Court of JFCM, the seventh respondent sent a radio message to DSP, CBCID Cuddapah, to withdraw the charge sheet and commence investigation afresh. At this stage, instead of strictly obeying the orders of the seventh respondent, the DSP, CBCID Cuddapah, approached the senior Assistant Public Prosecutor for opinion, which changed the situation. Indeed, when the Public Prosecutor or Assistant Public Prosecutor seeks withdrawal of the charge sheet from the Court, the permission of the Government is not necessary. That was so held in **Ram Lal Narang v. State (Delhi Admn.)** . Indeed, as held by the Supreme Court, in **Hasanbhai Valibhai Qureshi** (supra) even in a case where a charge sheet is filed, further investigation under Section 173 (8) of the Code of Criminal Procedure, 1973 (Cr.P.C.) can still be taken up even without obtaining any order from the Court of the Magistrate, competent to take cognizance of the offence. Such being the position, the direction issued by the seventh respondent on 01-05-2001 directing the D.S.P., Cuddapah, to file memo before the Court to proceed with the case was *ex facie* illegal. In that view of the matter, this Court is not able to countenance the submission of the learned Government Pleader for Home that when once charge sheet is filed before the committal-Magistrate, no investigation is permissible under law. The upshot of above brief discussion is this. The case being Crime No.25/97 having been entrusted to CBCID, the Inspector of Police, Rajampet (Rural) had neither competence nor jurisdiction to investigate the crime and file charge sheet. The charge sheet being illegal, the learned JFCM, Nandalur, could not have legally and validly taken cognizance of the case. Secondly, as suggested by
Dr. C. Syam Prasada Rao in his report dated 07-07-2000, the seventh respondent issued a radio message for *de novo* investigation and there was no valid reason for the seventh respondent to direct the DSP, CID, Cuddapah, the fifth respondent herein to file the impugned memo. Indeed, as rightly pointed out by the learned counsel for the petitioner, when themselves completing investigation and filing charge sheet, CBCID could not have filed a memo requesting the learned JFCM to proceed with the case. Therefore, the grievance of the petitioner is justified.

In the result, for the above brief reasons, this writ petition is disposed in the following manner:

1. The learned Judicial Magistrate of First Class, Nandalur, is directed to ignore the memo dated 04-05-2001 filed by the DSP, CID, Cuddapah, and await the charge sheet/report under Section 173 (2) Cr.P.C. to be filed by the CBCID;

2. As directed by the seventh respondent in radio message dated 27-07-2000, the D.S.P., CBCID, Cuddapah, shall commence *de novo* investigation and file his report within a period of four (4) months from the date of receipt of this order;

3. As and when such report is filed before the Court of JFCM, Nandalur, it shall be open to the petitioner to seek discharge from the crime, in case the report of the CBCID is adverse to him;

4. It is made clear that any observation made herein is for the purpose of the disposal of this case. The CBCID and the Court of JFCM shall deal with the matter independently without, in any manner, being influenced by the observations made hereinabove.

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(V.V.S. RAO, J.)

27-01-2006

Note: LR Copy be marked

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MRR

To

One Fair Copy to the Honourable Sri Justice V.V.S.Rao

(For his Lordship's Kind Perusal)

1. The Secretary, Government of Andhra Pradesh,

Home Department, Hyderabad.

2. The Superintendent of Police, C.B.C.I.D., Rayalaseema Region, Hyderabad.

3. The Deputy Superintendent of Police, C.B.C.I.D., Kurnool.

4. The Deputy Superintendent of Police, C.B.C.I.D., Nellore.

5. The Deputy Superintendent of Police, C.B.C.I.D., Cuddapah.

6. The Director General of Police, Criminal Investigation Department, C.I.D., Andhra Pradesh, Hyderabad.

7. The Additional Director General of Police, Criminal Investigation Department, C.I.D., Andhra Pradesh, Hyderabad.

8. Two CCs to Government Pleader for Home.

9. 8 LR Copies.

10. The Under Secretary, Union of India, Ministry of Law,

Justice and Company Affairs, New Delhi.

11. The Secretary, A.P. Advocates' Association Library, High

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12. Two CD copies.